

Court of Appeals, State of Michigan

ORDER

Anthony Cleveland v State Employees Retirement Board

Docket No. 289547

LC No. 08-108468-AA

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

Brian K. Zahra
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the December 8, 2008, order of the Wayne Circuit Court remanding the matter to the Administrative Law Judge hereby is VACATED. The record reflects that in August of 2007, counsel admitted that he had not raised the issue in his exceptions to the proposal for decision, having reviewed only petitioner's testimony. Failure to raise an issue in exceptions to a proposal for decision waives the issue for appellate review. *Attorney General v Public Service Comm'n*, 136 Mich App 52, 56; 355 NW2d 640 (1984). Even had the issue been preserved, it is without merit. An agency's factual findings, particularly regarding witness credibility and evidentiary questions, are afforded deference. *VanZandt v State Employees Retirement Sys*, 266 Mich App 579, 588; 701 NW2d 214 (2005). The circuit court thus should undertake its review on the merits based on the existing administrative record. *Galuszka v State Employees Retirement Sys*, 265 Mich App 34, 45-46; 693 NW2d 403 (2004). The case is REMANDED for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 23 2009

Date

Sandra Schultz Mengel
Chief Clerk